

## MEMORANDUM

DATE: October 30, 2007

TO: Ms. Sharon L. Summers, DMMA  
Policy, Program & Development Unit  
Division of Social Services

FROM: Daniese McMullin-Powell, Chairperson  
State Council for Persons with Disabilities

RE: 11 DE Reg. 443 [Proposed Food Stamp Notice Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Social Services' (DSS) proposal to amend its regulations regarding notices of termination or reduction of food stamp benefits. The proposed regulations were published as 11 DE Reg. 443 in the October 1, 2007 issue of the Register of Regulations. SCPD has the following observations.

First, it is difficult to determine the rationale for the revisions. The APA contemplates that agencies will describe the "substance" and "issues" underlying a proposed regulation:

The notice shall describe the nature of the proceedings, including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act and reference to any other regulations that may be impacted or affected by the proposal.

Title 29 Del.C. §10115(a)(1).

In contrast, DSS provides no information describing the amendments or rationale for proposal. This undermines the public's ability to comment on the initiative. DSS may wish to prospectively consider including more information about the substance and issues underlying proposed amendments.

Second, §9006.3 directs that no notice of adverse action be provided to beneficiaries under certain circumstances. DSS proposes to delete the following basis for withholding notice: "DSS mail has been returned by the post office indicating no known forwarding address". The underlying federal

regulation [7 C.F.R. 273.13 (attached)] includes the following standard:

(c ) *Optional notice.* The State agency may, at its option, send the household an adequate notice as provided in paragraph (b)(3) of this section when the household's address is unknown and mail directed to it has been returned by the post office indicating no known forwarding address.

The federal Department of Agriculture has provided additional direction through the attached excerpt from a Question and Answer Guidance document on its website. It recites as follows:

Question K-8

Suppose the local office has lost contact with the household. Perhaps the post office returned mail. What should the local office do?

Answer K-8

Until 7 C.F.R. 273.12© )(3), the Request for Contact, becomes effective, the state agency must issue an advance or adequate notice of adverse action and terminate the household's participation. However, before doing so, it would be prudent to try to locate the household in another way, since the notice will probably never reach the household.

When 7 C.F.R. 273.12© )(3) becomes effective, the state agency will have to issue a request for contact and then issue a notice before terminating the household's participation. But again, another attempt, such as a telephone call, would be prudent.

Either way, the state agency has the option of sending an adequate, rather than advance, notice (please see 7 C.F.R.273.13© ).

The federal standards ostensibly encourage attempts to notify a household of adverse action and offer DSS the discretion to issue written notice even when prior mail has been returned by the post office with no forwarding address. SCPD endorses the proposed amendment since it favors beneficiaries.

Third, DSS proposes to amend a reference in §9006.3(10) to correct a citation by substituting DSSM 7004.1 for DSSM 7000:

Do not provide individual notices of adverse action when:

(10) Converting a household from cash repayment to benefit reduction as a result of failure to make agreed upon repayment as discussed in DSSM ~~7000~~ 7004.1.

Substantively, the concept underlying this provision is unobjectionable since it is based on 7 C.F.R. §273.13(b)(10). Moreover, since there is no discrete §7000 (only a chapter 7000), it makes sense to amend the citation. However, since DSSM 7004.3 addresses failure to comply with a repayment agreement in much more detail than DSSM 7004.1, DSS may wish to consider amending the

reference to either refer solely to "DSSM 7004.3" or to both "DSSM 7004.1 and DSSM 7004.3".

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations on the proposed regulation.

cc: Ms. Elaine Archangelo  
Governor's Advisory Council for Exceptional Citizens  
Developmental Disabilities Council

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